



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

March 15, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Sean Downes**
Tax Registry No. 918975
75th Precinct
Disciplinary Case No. 82894/07

CHAN

The above named member of the service appeared before Assistant Deputy Commissioner John Grappone on December 2, 2008 and was charged with the following:

DISCIPLINARY CASE NO. 82894/07

1. Said Sergeant Sean Downes, assigned to the 75th Precinct, while on duty, on November 10, 2005, at approximately 1735 hours, while in the vicinity of 669 Pennsylvania Avenue, Kings County, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did forcibly stop two persons, identity known to this Department, without sufficient legal authority.

P.G. 203-10, Pages 1 to 2

GENERAL REGULATIONS

2. Said Sergeant Sean Downes, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did frisk two persons, identity known to this Department, without sufficient legal authority.

P.G. 203-10, Pages 1 to 2

GENERAL REGULATIONS

3. Said Sergeant Sean Downes, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did search two persons, identity known to this Department, without sufficient legal authority.

P.G. 203-10, Pages 1 to 2

GENERAL REGULATIONS

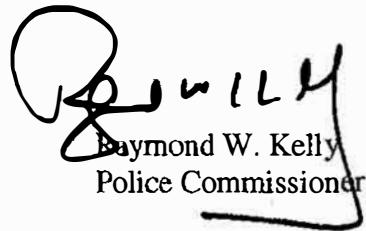
4. Said Sergeant Sean Downes, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did enter and search the basement area of 669 Pennsylvania Avenue without sufficient legal authority.

P.G. 203-10, Page 1 to 2

GENERAL REGULATIONS

In a Memorandum dated December 29, 2009, Assistant Deputy Commissioner Grappone found Respondent Downes Not Guilty of Specification Nos. 1, 2 and 3, and Guilty of Specification No. 4. Having read the Memorandum and analyzed the facts of this instant matter, I approve the findings, but disapprove the penalty.

With consideration of the tasks and duties Respondent Downes was performing on the incident date, coupled with a recognition of his otherwise very good service and performance history, the disciplinary penalty for this instant matter shall consist of the forfeiture of five (5) Vacation days.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

December 29, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Sean Downes
Tax Registry 918975
75 Precinct
Disciplinary Case No. 82894/07

The above-named member of the Department appeared before me on December 2, 2008, and July 9, 2009¹ charged with the following:

1. Said Sergeant Sean Downes, assigned to the 75th Precinct, while on duty on November 10, 2005, at approximately 1735 hours, while in the vicinity of 669 Pennsylvania Avenue, Kings County, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did forcibly stop two persons, identity known to this Department, without sufficient legal authority.

P.G. 203-10, Pages 1 to 2 – GENERAL REGULATIONS

2. Said Sergeant Sean Downes, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did frisk two persons, identity known to this Department, without sufficient legal authority.

P.G. 203-10, Pages 1 to 2 – GENERAL REGULATIONS

3. Said Sergeant Sean Downes, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: did search two persons, identity known to this Department, without sufficient legal authority.

P.G. 203-10, Pages 1 to 2 – GENERAL REGULATIONS

4. Said Sergeant Sean Downes, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the

¹ It was determined by the Court that August 7, 2009 was the due date for the submission of legal memoranda by the parties in the case. It was also decided by the Court that August 7, 2009 is the Decision Reserve date.

New York City Police Department, to wit: did enter and search the basement area of 669 Pennsylvania Avenue without sufficient legal authority.

P.G. 203-10, Pages 1 to 2 – GENERAL REGULATIONS

The Department was represented by Paul Gallagher, Esq., Department Advocate's Office, and the Respondent was represented by Andrew Quinn, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1, 2 and 3 and Guilty of Specification No. 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lawrence Carter, Jr., Henry Mosley, and Police Officer Lewis Ortiz as witnesses.

Lawrence Carter, Jr.

Carter is an employee of the State Department of Health and Hygiene in Maryland. He also owns three rental properties, two in Maryland and one in Brooklyn, on Pennsylvania Avenue. The Brooklyn property is a four-family residential rental unit, consisting of 3 two-bedroom apartments, 1 one-bedroom apartment, and a full finished basement. Carter testified that on November 10, 2005 he was present at the Brooklyn

property along with his superintendent, Henry Mosley, who is responsible for routine maintenance.

Carter said that he was planning to work on the bathroom shower and needed to buy some replacement tiles. He said that he and Mosley left the house at around 5:10 p.m. to go to the tile store, but gave up when traffic was bad. Carter told the Court that as he was driving in the direction of Mosley's house to drop him off, Mosley reminded him that he still had his work clothes on and wanted to change back into his street clothes, which were back where they were working. They returned to Pennsylvania Avenue, and parked across the street from Carter's building. Carter stated that he told Mosley to go across the street and change his clothes while he waited in the car, but that Mosley was having a problem opening the door. Carter said that he got out of the car and made his way across Pennsylvania Avenue, through the traffic, to help Mosley get inside. When asked how fast he crossed, Carter responded that, "I had to watch both ways. Once I decided to dash across, I ran across."

Carter stated that Mosley met him at the front door, and showed him what key he had been trying to use. According to Carter, Mosley had had been trying the wrong key for the door, and so he showed him the correct one and opened the door. Carter testified that prior to his opening the door he had not been stopped on the street by anyone.

Carter told the Court that after he and Mosley entered the front door they walked through the vestibule door and through the hallway. He said that they were still talking and laughing about the keys, and that the conversation lasted for at least five minutes with them standing near the stairwell to the basement and joking. Carter stated that after they finished talking Mosley went downstairs to change into his regular clothes and that

maybe 15 or 20 seconds after he went down, "I saw this person slide up the wall in the hallway with something in his hand saying 'police.'" Carter correctly identified the Respondent as the person in question.

Carter told the Court that he froze while trying to figure out what was going on. He said that the Respondent kept charging forward, and he saw him lift his arm and swing, "and I closed my eyes and I was bouncing off the wall and he said 'Get your hands up, spread your legs, keep still.' He began to search me all over. I was kind of shaking but I was trying to hold my own." Carter said that all of this took place in the back of the hallway, near the rear apartment on the first floor.

Carter described how he was searched, saying that, "Initially, he threw my hands back, kicked me and frisked me from my wrists to the bottom of my ankles." Carter said that the Respondent went into his pockets and removed things, throwing his keys to the floor. He said that he heard Mosley yell, "Butch, what happened?" (Butch is Carter's nickname) and saw him stick his head out of the stairwell. According to Carter the Respondent grabbed Mosley by his collar and smashed him against the door. "He slammed him and frisked him and initially put his legs up and kicked him, spreading legs and frisked him from top to bottom and began spinning him, searching his pockets, slamming him and continued to push his face in the wall."

Carter asserted that the Respondent kept asking both of them, "'Where is the stuff?' And I said, 'Where is the stuff? What stuff? You know what I mean what I am here for.' After several times saying that to me, I said, 'We are not drug dealers I own the building. My wallet is on the floor. You can knock on my tenant's door...'"

Carter stated that he was handcuffed by the Respondent who then threw him to the other police officer, instructing her to keep searching him and to put him on the floor. Carter said that the Respondent asked him who was downstairs, and that he told him nobody was downstairs. The Respondent asked where the keys were, and Carter told him, "You took my keys already. You threw it all over the floor my keys are on the floor." Carter said the Respondent helped him up and uncuffed him, intimidating him into showing him which key opened the basement door by saying, "You better get the right key otherwise I am going to kick this fucking door down."

Carter testified that he showed the key to the Respondent, who then ordered his partner to recuff him and slide him back down to the floor. Carter said that the Respondent opened the door and went through. The door slammed behind him, but Carter stated that he could hear him behind the door, "ripping apart things back there I had some cabinet hardware. You can hear the stuff being scattered down the stairs I can hear him scrambling." Carter said that the Respondent was down in the basement for almost ten minutes, then came back upstairs and said, "Get the fuck up." When Carter told him that he could not do so with the handcuffs on, the Respondent told his partner to lift him up. Carter said that the Respondent told him not to give him a hard time the next time he tells him to do something and then told him to turn around. Carter said that he was uncuffed and pushed into the wall. Mosley, meanwhile, was still sitting on the floor, and Carter could not recall if he had been handcuffed. Carter said that after he had been uncuffed the Respondent ran out the door. Carter described how he had called after him saying, "'I want your badge.' He turned around, swiped his badge in front of me, 3978, and he ran in the vestibule door. 'I want your badge, and I want to know what precinct

you are in.' He came back and was chest to chest with me. 'You want a ride.' Which I took as he is going to arrest and handcuff me again. I just backed off." Carter said that after he backed off, the Respondent darted out the door a second time.

Carter stated that while he was being frisked and seated, Mr. Wesley, a tenant, opened the door and said, "Mr. C. what's going on? He is my landlord." According to Carter, the Respondent, "sneered at him and pointed at him to get back in the apartment and close the door and he complied."

Carter said that after the police left the building, he and Mosley grabbed their stuff and went downstairs. Carter also grabbed something to jot down notes for the description of the police officers and the incident so that he could go to the precinct and make a report. Carter said that the basement was in shambles and that his cell phone and some money were missing.

Carter said that he grabbed his keys and went to the 75 Precinct with Mosley. He did not remember who he spoke to there, but said that he was yelled at for not knocking on the door and waiting for someone to come out. A police officer was sent to take their complaint, and they were told that it was a case of someone impersonating an officer. They were escorted back to the property and people from the Internal Affairs, Crime Scene, and Impersonation units all came out.

At the request of the various detectives involved in the case, Carter and Mosley went to a different police facility in Queens. They were interviewed and were then independently shown first a file of pictures of people who had impersonated officers, and then a file of police officers. Carter positively identified the Respondent and his partner by their photographs.

Carter acknowledged that at the time of the trial he was involved in a lawsuit with regard to this case, and that he was unaware of any monetary amount being requested. Carter identified a series of photographs taken by the Civilian Complaint Review Board Investigator of the property on Pennsylvania Avenue. (Department Exhibits (DX) 1 through 9. He told the Court that at the time of the incident the street was dark, but that there were a lot of street lights.

Carter acknowledged that DX 1 was a fair and accurate representation of his house as it looked on November 10, 2005. "I think it definitely is. This is Pennsylvania Avenue; this is northbound from my house." He identified DX 2 as a picture of a lock on the front door of his house at 669 Pennsylvania Avenue. He stated that there is no way to enter this dwelling without a key, because there is no buzzer system.

Carter stated that DX 3 depicts, "The frontal view of the door and the steps leading to the door." He noted that the door was old and made of steel. He further stated that DX 4 is, "A picture of the vestibule door. A door that is about seven feet inside the front door." He noted that inside the vestibule between the front door and the second door is about "A seven foot by four foot – it includes the mail boxes." He said that the door is closed but not locked, and that DX 4 is a picture of the door coming in from the outside.

Carter identified DX 5 as a picture of the vestibule door, which he said does not lock. "It keeps the draft and from people looking from the curb into the building. It provides a certain privacy and some security. The door can be adjusted to lock but it is not the primary locking door." The door to Apartment No. 1 Front is also visible in the photo, and was marked with an arrow pointing to it.

Carter identified DX 6 as, "a picture of Apartment 1-R in the staircase going to the second floor." Carter stated that the full door is visible in the picture. Carter stated that DX 7 "shows a close up view of Apartment 1-Rear and a partial view of the basement door." At the request of the Court, Carter marked 1-R on the photograph to indicate the door to Apartment 1-R and made an arrow to indicate the door to the basement. He stated that CCRB took the pictures, and that he believes that the individual in the pictures is Mosley. Carter identified DX 8 as a picture of his bedroom and the basement. There is a doorway visible, and he stated that the bedroom door locks. Carter further identified DX 9 as, "a picture leading down from the first door through the doorway down the steps in the basement." He said that the door visible at the bottom of the steps leads to the basement area.

Carter was shown DX 10 and said that there were, "Two pictures here. One of the pictures, to the left, a rough sketch of the hallway leading in from the front door to the back apartment and up the stairs." In regard to the second diagram he described it as, "a rough sketch layout of the basement which includes the layout of the stairs and the doorway from the stairs to the hallway. At the request of the Court, Carter marked the first and second sketches as Roman numerals I and II, respectively.

Carter placed a number 1 marking on the document as to where he was when he first saw the Respondent enter the building, "On the side of the stairwell before the basement door." Carter had stated that he was slammed against the wall by the Respondent, and he put a number 2 on the diagram with an arrow pointing to the wall which he claimed he was slammed into. He put a 3 next to the entrance to the basement apartment on the diagram, a 4 next to the vestibule door, and a 5 next to the front door.

(All of the above were on the diagram previously marked with a Roman numeral I.) On the second diagram, Carter put a 6 on the spot where he had been doing tile work earlier that day. He also wrote "APT" inside the apartment.

On cross-examination, Carter reiterated that when he and Mosley left the house together go to a tile store at approximately 5:10 or 5:15 on the date in question, both the basement and the outside door were locked. He said that they were traveling southbound on Pennsylvania Avenue for five to ten minutes when Carter decided that he could not push through the traffic and therefore turned around. He made a right on Linden Boulevard and another on Georgia Avenue so that he was heading northbound.

Carter stated that he is familiar with the neighborhood and that he knows where Hegeman Street is. He said that it is, "No more than 100 yards or so," from the house at 669 Pennsylvania Avenue. He acknowledged that there are two bodegas on Hegeman and Pennsylvania Avenue, and stated that at no time during this incident did either he or Mosley go into the bodegas.

Carter stated that when he returned to the house it was for the purpose of Mosley going in to change his clothes, and that he had intended to wait in the car. When asked about the weather that day he said that, "It was a clear day. Maybe somewhere between 40 and 50 degrees." Carter said that he stayed legally parked in the car directly across the street from the building, on the west side of the street, while Mosley approached the house. According to Carter, Mosley was unable to gain entrance and so, "I exited the car because he was shouting something to me and I couldn't hear it. I didn't know what the situation was. When I get across the street he told me his key does not work." Carter stated that even with the car window rolled down he could not hear Mosley over the

traffic. He said that he did not hear anyone else shout to him while he was in the car listening to Mosley.

Carter testified that, "I stood on the side of my car until I could make it across. You have to be sure you can make it across both lanes of traffic. It took me a while to gauge when I could make it across safely, then I scampered across." When asked to clarify if he had walked across, Carter responded that, "I skipped."

Carter stated that when he got to the curb, he asked Mosley what the problem was and Mosley responded that his key did not work. Carter asked to see which key Mosley was using, and discovered that it was the wrong one. Carter said that it took about twenty seconds from the time that he got there to enter the building, and that during this period of time he did not hear anyone else shouting, nor did he observe the Respondent or what appeared to be any other police officers at that time. He stated that after he opened the door and entered the building the door closed behind him and locked automatically. He said that after they went through the vestibule door, he and Mosley talked about the keys for about four or five minutes, "We were talking and joking," before Mosley proceeded to go down to the basement apartment while Carter remained in the hallway.

Carter stated that at the time of the incident he was wearing a pair of blue sweatpants and a shirt that was white with red and black lettering on it, full of plaster and paint, and a hat and small blue jacket." When asked to describe the jacket, Carter said that it was, "Just a regular blazer wind jacket," and that he believes it was blue.

Carter stated that he saw a young boy, the brother of his tenant in Apartment 1-R, leave the apartment and head towards the front of the building. He explained that he did not see the boy go through the doors because he was not focused on the boy, he was

talking. Carter asserted that after the boy exited, "That's when I saw [the Respondent]... He had his hands up. I never saw the badge. I heard 'police.' I saw his face...His left hand was up." Carter said that the Respondent approached him fast, sliding along the wall with his back against the wall of Apartment 1- Front (at this point during the testimony the wall was marked with a red 'R' on DX 10).

Carter acknowledged that he had given a statement to the Civilian Complaint Review Board (CCRB) on or about January 3, 2006, and recalled telling the investigator that, "I saw an officer charge in shouting police at 5:35." When asked if the Respondent had been charging or sliding, Carter said that, "In my opinion he was sliding on his back but charging." When asked how the Respondent had slammed him, Carter said that, "He came up to me. His arm went up and I closed my eyes and I heard bam, bam, bam, and I opened my eyes. He was slamming me again, face first." When asked where he was hit, Carter responded, "On my shoulder. I don't recall being hit on my head. My entire left side got slammed... My eyes were closed. I saw the swing. I closed my eyes to protect my eyes I heard slam bang. I was being thrown against the wall face first." Carter described the Respondent's "swing" as him coming in with his left hand and arm at about waist level to bang him. Carter said that, "I definitely got struck along my right side. I didn't see it. I closed my eyes. I wear glasses. I thought I was going to be hit in the eye." Carter said that his left side, somewhere between the shoulder and elbow area, made contact with the wall.

Carter was asked if he remembered being asked by the CCRB to describe how he had been slammed and answering that, "I can't. I don't recall. I just know boom. I was not expecting that, I thought maybe he was going through the back of the apartment. I

don't know if he struck me." Carter said that he didn't recall giving that answer specifically, but acknowledged that he gave that testimony. Carter was also presented with his answer to the question as to which part of his body made contact with the wall. He had told CCRB, "Well, I don't recall it that well. He hit me on the left and right side and slammed into a wall." Carter did not recall giving that information, and reiterated that, "he slammed me on the right side and sent my left side into the wall."

Carter stated that when he first saw the Respondent he did not see anyone else with him, but that there came a time when he saw a female police officer present. They were both in civilian clothes.

Carter stated that he was slammed into the wall five or six times and suffered injuries, but that he did not show those injuries to the Internal Affairs Bureau since they did not call him until six weeks after the incident. Carter told the Court that when he went to meet with them, "They weren't interested and had me escorted back to the scene." He said that other police officers responded to his residence, but that, "During the interviews I did not take my clothes off and show them the injuries on my body." Carter said that he took photographs of the injuries a day or two afterwards and that he turned them over to his attorney. He said that within a few days, and before he spoke to an attorney, he went to a private doctor and got a referral to a psychiatrist along with advice on how to care for his wounds, but no prescription medication.

Carter testified that after he was slammed against the wall he was frisked, and that his hands were up against the railings above the stairs while his body was being checked. He told the Court that while this was going on the Respondent was asking, "Where is the stuff," and that he was facing the wall and the Respondent spun him around. Carter said

his response was, "I am saying we don't have anything. I own the building. Enough is enough. I don't have anything. I don't know about the stuff. I am an owner of the building." Carter said that the frisk of his person began about thirty seconds before Mosley came back up from the basement and continued after he was there. Carter was not sure if the female police officer was present at that point in time, as he was "focused on maintaining my composure after being slammed on the wall and being spun around."

Carter stated that Mosley initially "shouted" to see if he was okay, and that he was unable to respond. Carter said that once Mosley opened the door and stuck his head out, the police officer grabbed him by his collar and snatched him though the door. Carter said that the Respondent was in the middle of searching him when Mosley arrived, and that he (Respondent) was shouting and cursing in a vicious voice. "I recall some very serious profanity when he wanted the key to get into the basement door. He was very profane and threatening and agitated. He was looking like an out of control dope fiend who is willing to do anything." Carter told the Court that he had never sued the New York City Police Department before this time.

According to Carter, Mr. Wesley, the tenant in 1-R, came out of his apartment in response to the noise, and the Respondent ordered him back in. "Mr. Wesley opened the door as a gentleman and said my name. That's my landlord, Mr. Carter. What is going on? He barked at him and very demonstrative. Sgt. Sean Downes barked at him very demonstrative to get in the door and lock the door and don't come out here again." Carter testified that at no time did Wesley walk across the hall to take out garbage.

Carter stated that the Respondent, "barked to the passive police officer to cuff him and she came to me looking and said I got to do it, that's my sergeant." Carter was asked

why he had never mentioned that comment to the CCRB, and responded that, "They are controlling the interrogation. You can only answer things you are asked of. I told them that he showed up on the scene that night. I am sure those reports are available. She was a reluctant participant. She made it clear she had to do it even though you can see the facial expression that she was not what we would call a willing participant in this crime."

Carter said that when the second officer, Police Officer Maria Catalano, made this statement to him, the Respondent was still in the hallway and within earshot. "She said it to me very lightly. He probably I am not sure he heard it. She did say that." Carter acknowledged that the hallway is a small one.

Describing how he had been handled, Carter told the Court that, "They threw my whole wallet out. I am not sure whether P.O. Maria Catalano did anything. I didn't see her going through my wallet. She was in I am assuming she was in the hallway." Carter could not recall if at any point he had told them when his birthday was or that at the time of the incident he was residing in the basement of the house. He testified that his license says that he resides in Maryland, and that, "I don't know if I would say I resided in the basement at Pennsylvania Avenue."

Carter stated that he was, "pushed down to the ground, handcuffed, and pushed down by pressing on my shoulders and forcing me down the wall." Carter stated that he was leaning against the wall he had been frisked on; and that the door to the basement is right next to that wall, so that with his back to the wall, the door was on his right. He testified that he could not see down the stairs, but, "I heard him go down. You can hear a one hundred pound man go down the stairs. It makes noise on every step." On the

bottom of the stairs is a second set of steps. Carter stated that he heard the Respondent go into the basement apartment.

Carter acknowledged his claim that money in the amount of \$975 was stolen during the encounter, and told the Court that he believes his cell phone was also stolen, although it was later found in the yard. He stated that he never saw the Respondent go in the yard, and reiterated that he was inside the hallway. Carter stated that the last place he saw the money in question was in his bedroom in the basement apartment on the TV table. He explained that although it is his son's apartment, when he comes to Brooklyn he stays there for a day or two. Carter explained that he had money with him from the tenants, and that he brought it with him to pay for work and to pay some people that he had to do work for. He stated that when he is working in the building he leaves everything in the basement so that he doesn't forget anything at the end.

Carter further testified that the Respondent was downstairs for "very close to ten minutes," and that during this entire time period he was sitting with his back against the wall, handcuffed. According to Carter, Mosley also spent this time sitting on the ground, but he did not think that Mosley was handcuffed. Only Catalano was with them, and "She was saying to keep calm. Not saying much, He was going through my place."

Carter stated that he was not shouting but that, "I am complaining inside. I am upset. I have been violated. This is well out of control. I am scared for my life. This police officer is way over the line.... It has gone beyond my imagination." Carter said that he could hear things being thrown around downstairs.

Carter testified that when the Respondent came back upstairs he ordered Carter to get up and helped him up, then spent some time pointing in his face, shouting and yelling

and using profanity about, "What I better do the next fucking time." Carter noted that other than Wesley nobody ever came out from any of the apartments at this time.

Carter stated that he demanded the officer's badge number and was told it was 3978. He knew it was a sergeant's badge because of what Catalano had said before; "that's my sergeant." Carter said that the whole incident, from the time he first encountered the Respondent until he left, lasted about 20 to 25 minutes.

On re-direct examination, Carter said that prior to the incident in question he had never made a CCRB complaint against the police officers of New York City, and that since then he has not had any complaints. He also stated that prior to November 10, 2005, he had never seen the Respondent or Catalano, and that he lives in Maryland.

Carter reiterated that he was handcuffed when the Respondent went down to the basement, and said that in regard to his testimony about hearing the Respondent while he was down there, "the basement floor is tiled. When anyone is walking around, you can hear them. You know exactly where they are except at extreme distances." Carter stated that his back and ears were to the wall, and that this assisted him in hearing what was going on downstairs because, "You can hear through parts of the wall. The upper part of the wall is hollow. The lower part is full of concrete. You can hear because the stairwell is wooden. Every time you step on one step it drops like an inch. Each time you go down the steps you can feel and hear someone walking down the steps."

Henry Mosley

Mosley is a dietary worker at a Brooklyn/Queens nursing home as well as superintendent of 669 Pennsylvania Avenue. He has been employed as a maintenance

worker for about 20 years, and he testified that on November 10, 2005, he was working in that building fixing the basement bathroom tiles along with the owner, Carter. He stated that after they finished work they left together to go pick up tiles, but that they realized the place would be closed by the time they got there and so they turned around. Mosley stated that Carter drove him back to 669 Pennsylvania Avenue so that he (Mosley) could change his clothes, and that Carter parked on the west side of the street, opposite the building. Mosley stated that when he exited the vehicle he had to run to cross the street because there is a lot of traffic on Pennsylvania Avenue. He said that he was not stopped by anyone before he entered the building.

Mosley had no trouble entering the first door of the building, but he did have trouble with the basement door, since he could not find the right key. He said that he went back out the front door and called to Carter, who was sitting in the vehicle with the window rolled up. Mosley said that he established communication with Carter without having to yell, and that Carter came to show him the key. Mosley said that Carter had to run across the street, and that no one stopped him while he was doing so. They went inside to the basement door and Carter took his keys and showed him the right one for that door. Mosley estimated that they were inside for a total of about a minute before he went downstairs, and that they did not talk about other matters aside from which key to use.

Mosley left Carter upstairs to go and change into his clothes, which were located in the back of the basement by the boiler room and not in the basement apartment itself. Mosley stated that he got to the bottom step but did not enter the basement at that time, because while he was down there he heard, "Boom, boom, boom, boom, boom." Mosley

testified that he rushed back upstairs to the main floor and opened the door. He said that a big figure grabbed him and slammed him against the wall (here Mosley positively identified the Respondent in the courtroom). Mosley explained that the left side of his face was slammed against the wall, and that, "All I heard was the Respondent saying, 'Where is it at.'"

Mosley testified that the Respondent told him not to turn around and to spread his legs. He said that the Respondent patted him down from the legs up and kicked the lower part of his leg, then felt inside his pockets and threw all of their contents on the floor. Mosley said that there was a female officer present but that he was following orders not to turn around and so he only got a glance and did not know what she was doing. He stated that he was never handcuffed, and that while he was facing the staircase, Carter was to his right, closer to the front of the building. He stated that the police officers kept asking, "Where is it at?" and that Carter said, "What are you talking about?"

Mosley testified that the Respondent told Carter to, "Open the door, or I will kick it down," and that he was referring to the basement door which the Respondent was standing by. Carter showed the key and according to Mosley "He wasn't taking fast enough time for him." The Respondent went downstairs and according to Mosley he heard, "rumbling," and that the Respondent was downstairs for about five minutes. During that time Mosley still had his face turned toward the staircase while Carter was handcuffed on the floor.

When the Respondent came back upstairs he shined a flashlight in Carter's mouth and told him to get up, but that Carter was unable to do so because of the handcuffs. Mosley said that the female officer lifted up Carter and that the officers then proceeded to

leave the building. According to Mosley, while he was busy picking up his belongings Carter stopped the Respondent and asked him to show him his ID or a badge. When asked if at any time he saw a badge or shield in the possession of the Respondent, Mosley answered that, "It was a quick reflex." He did not see or hear the badge number given by the Respondent.

Mosley stated that the Respondent asked Carter if he wanted him to take him to the precinct, but that Carter did not go with the Respondent. Instead, Mosley and Carter gathered their belongings and took a look in the basement. Mosley said that they saw, "stuff thrown around," and that Carter indicated that he was missing money and a cell phone. The cell phone was later recovered in the front yard, and that after the officers left they did not return to the building.

Mosley testified that he and Carter went to the 75 Precinct and filed a report, "Eventually, after getting messed around at the precinct...They didn't want to take a statement...We went to the precinct and went to the door and they told us 'Don't come. Go back. Stand back.'"

Mosley said that after they left the precinct they went back to 669 Pennsylvania Avenue and some police officers from the Crime Scene Unit came out. About an hour after the incident, he and Carter made their way to the Police Impersonation Investigation Unit in Queens, where they were put into separate rooms and shown pictures of people first on a computer and then in an album type book. Mosley testified that he did not make any positive identification after viewing all of the photos, and that he did no see any of those people at 669 Pennsylvania Avenue.

On cross-examination, Mosley reiterated that he and Carter had been working for a while before they left together at about 5:00 p.m. to go and get additional tiles. Mosley stated that he does not live at 669 Pennsylvania Avenue, but that he is the superintendent there. Mosley was aware that there are a couple of bodegas on the corner of Hegeman Avenue, which he said is about a block away from the house. He asserted that he was not inside the bodega on the day of the incident.

Mosley testified that he and Carter never made it to the tile store that day, and that it was not because of traffic conditions, which were always bad, but because they were too late. They went back to 669 Pennsylvania Avenue so that Mosley could change out of his work clothes, and Mosley explained that Carter did not have to change because he was living there and was just going to drive Mosley home. Mosley said that he opened the front door and the vestibule door but couldn't open the basement door. While he was in the building he could not see Carter and Carter could not see him. Mosley estimated that he was inside trying to get the basement door open for about 2 to 3 minutes before he went back outside. He did not go back into the street, but waited inside the partially opened front door of the building and yelled to Carter. When asked if he recalled what he had yelled and what Carter had responded, Mosley said that the exchange was, "I don't have the right key," with Carter yelling back, "The key is on the ring." Mosley reiterated that Carter had heard him and had responded to what he was saying. He stated that Carter then got out of the car and showed him the key and they both went inside. Carter showed him how to open the door, and he immediately went downstairs. According to Mosley, they did not talk and laugh, and from the time they went into the building until they went to the basement door they were in the hallway for only seconds. Mosley did

not see a little boy run out of the building, and at the point when he went to go down to the basement he did not see any police officers in the building. There is a second door at the bottom of the stairs leading to the basement apartment that Mosley said was closed but not locked at this time. Mosley stated that he never opened it on his way down. He also stated that there are no markings on that door indicating that there is an apartment down there.

Mosley said that when he heard noises he did not know what they were and thought that Carter might have fallen. He said that Carter was not screaming in pain, but that he heard "arguing with people." Mosley said that he heard the voice of someone he did not know, but never heard anyone say, "police." From the time that he started to walk down the stairs until the time that he came back up, Mosley approximated that only two or three seconds had elapsed.

Mosley testified that when he went through the door, the Respondent grabbed him by the shirt with both hands and threw him against the wall. At the time, Carter was right next to the door against the wall that leads to the stairs. Mosley was shown DX 7 and indicated that in the picture he is in the position that he was in when the police officer had him, and that Carter was in the middle of the floor between the banister and the opposite wall. Mosley said that when he first saw Carter he was not being pressed against the wall or pushed, nor did he have his face flat on the floor. Mosley asserted that the entire time that he was up there, he never saw Carter being pushed or shoved into a wall or being struck and hit. Mosley said that from the time he first heard the voices until the time that he was back on the first floor, maybe seven or eight seconds passed.

Mosley stated that the Respondent started kicking his legs apart to make his stance wider and patting his body. He said that the Respondent kept saying, "Where is it," and never handcuffed him. Describing the physical contact that the Respondent had with him, Mosley said that, "Every time I looked around to see, he kicked me and begun at the feet," to spread them further, and that, "they couldn't go any further." Mosley stated that after the Respondent patted him down he also searched his pockets and threw the contents on the floor. He said that they did not go through his wallet and remove his identification, and that after they dropped it on the floor they just left it there.

Mosley said that Carter was saying things like, "I own the building; I am the landlord," and that although he was using a loud voice to try and get his point across he was not yelling. The Respondent kept responding "Shut the fuck up," in a loud voice. Mosley said that during this exchange the Respondent was less than 2 or 3 feet away from Wesley's front door and that he was shouting and screaming, and cursing a lot. According to Mosley, Wesley came to the door and the Respondent made him go back inside. To his knowledge, the Respondent never let Wesley pass by to, "take out garbage or anything like that."

Mosley stated that he saw the female officer handcuff Carter, and that they told Carter to sit down before the Respondent shoved him to the ground. Carter was leaning against the staircase wall when the Respondent went downstairs. Mosley said that he could not see downstairs, but that the Respondent was down there for about ten minutes. Mosley said that he did not have any conversation with the female police officer while the Respondent was downstairs, but that Carter was talking to her; "I remember her saying I have to do what my sergeant tells me."

Mosley told the Court that he did not speak about his testimony to Carter on the day of the hearing, and that he had not discussed this case with him before that day. He acknowledged that he is a plaintiff in a lawsuit against the Respondent and the City of New York as a result of the incident in question, and that he is suing and seeking monetary awards.

Mosley could not remember the exact words, but stated that after the sergeant came back upstairs at some point he ordered that Carter be uncuffed. Mosley said that at no point was he ever sitting down, and that the whole time he was standing with his hand against the rail, as depicted in DX 7, Carter was leaning against the same wall, a few feet away.

Mosley had not provided any information to the police officers so that they could complete a report confirming they were stopped, and that the female officer never asked for his name, identification, address or birth date. Mosley said that he gave that information to Internal Affairs when they came to the house, but not to either of the officers who were present at the time of the incident.

Mosley said that after the incident the police officers walked out of the building, and that he did not have any conversation with them, but Carter did. He stated that Carter asked to see the Respondent's badge, and indicated that in response the Respondent had pulled a badge from his chest and flipped it back quickly. Mosley did not hear the Respondent say the numbers 3978, but did hear him ask if they wanted a ride to the precinct. At no time did Mosley see any type of badge on the female police officer.

When asked if he had suffered any injuries, Mosley answered, "Flashes in my left eye. I see flashes in my left eye." He told the Court that he has been to the doctor. When

asked if Carter was injured at all, Mosley replied, "I think he has bruises in his back" but he had never seen them.

Mosley testified that the house has both a backyard and a front yard, and that the cell phone was recovered in the front yard. When asked if he knew how much money Carter claimed was stolen, Mosley said, "I think he said \$975." Mosley had not seen the money that day.

Mosley recalled giving a statement to a CCRB investigator in or about April of 2006 at 669 Pennsylvania Avenue. He was asked if he recalled making the following statement, "He had a gold badge. He told Carter the numbers," and said that he did say that. He reiterated that he heard no numbers, and said he didn't remember telling that to the investigator.

On re-direct examination, Mosley acknowledged that as the superintendent of the building for the last fifteen years or so, he knew the names of the tenants in all of the apartments, and that Wesley lived in the downstairs apartment while Darren Carter (Carter's son) lived in the basement apartment. The basement area had been turned into an apartment about five years previously and Darren Carter had been living there for about a year or two at the time of the incident. Carter explained that the other tenants were not normally allowed in the basement; "they come down if someone needs something for an apartment. They might come speak with the son or daughter who lived there at the time." He said that the two bedrooms both have doors that lock, and that on the day of the incident the doors were not locked.

Mosley was not wearing a watch on that day and that all of the time frames he had given were complete estimates. He noted that the first thing he saw right when he came

up the stairs was the Respondent and that he did not know where Carter was at that point in time.

Police Officer Lewis Ortiz

Ortiz has been a member of the Department assigned to the 75 Precinct since 1991. He is currently assigned to the Street Narcotics Enforcement Unit (SNEU). Ortiz told the Court that on November 10, 2005 he was working the 1500 by 2235 tour and was assigned to the SNEU observation post, where his duties entailed going out in plain clothes and observing street narcotics sales in the community. On that day Ortiz and Officer Angelo Biaz were working out of an unmarked car, and they were both carrying point-to point radios. The team supervisor on that day was the Respondent, who was assigned to one of the chase cars. When the observation post gives out a description of the person or people buying drugs, it is the duty of the officers assigned to the chase car to go and stop the individual or individuals.

Ortiz testified that at approximately 5:30 in the afternoon on November 10, 2005 he was in the vicinity of Pennsylvania Avenue and Hegeman Avenue, because there were a lot of complaints from the community about drug sales in that area. He said that, "they have a store there and a building. It's a little bit commercial and residential also." Ortiz said that he gave out a couple of descriptions in that area that day, and that in regard to the description he gave at approximately 5:30 in the afternoon, "I don't recall the description of the clothing but I probably did give out a description of the person purchasing narcotics." He did not have a specific recollection of the description of the person, nor did he have an entry in his memo book regarding the description of the person. He had no independent recollection of what the person looked like or of making

a radio transmission that contained a description of the person. He did not recall hearing any radio transmissions at that time over his own radio regarding a possible drug transaction, and testified that he and Biaz were the only ones performing the observation post that day. He did not specifically recall hearing any radio transmissions regarding a bodega at Hegeman and Pennsylvania Avenues.

On cross-examination, Ortiz explained that the radios the SNEU team uses are not broadcast on regular channels, because they do not want anyone else to hear the information being relayed. The only individuals that would be hearing any of the broadcasts made via point-to-point radios are other individuals on the SNEU team. Ortiz said that he had operated as an observation post officer many times prior to November 10, 2005.

Ortiz testified that on that day he and Biaz set up in the area of Hegeman and Pennsylvania Avenue, and that there is a bodega in that area which is a known drug location with several successful narcotics operations having emanated from there. He explained that once the operation team sets up, they let the other members of the team know where they are, and so it is fair to say that he had communicated to the team leader, in this case the Respondent, where he was. Ortiz did not recall what time he set up in the area of the bodega, but did recall being there at some time around 5:30 p.m. He stated that in general no memo book entries of observations are made, and no notes or specific records are taken, because the observation officer does not want to start to record too much information. He explained that that is the job of some other members of the team.

Ortiz acknowledged that it is fair to say that sometimes he makes observations and then when the chase team stops the individual it turns out that they did nothing

wrong. Ortiz noted that he does not necessarily communicate the specifics of what he observed, but simply gives more of a description and location with a direction of travel.

Ortiz recalled giving a description of an individual at about 5:35 p.m. on November 10, 2005, but did not recall what exactly he had seen that led him to make that radio broadcast. Ortiz noted that the date in question was between three-and-a-half and four years before the date of the trial. He explained that, "Well, every time I put a description obviously I do see something hand to hand transaction that is why I give the description of the individual and that is why [the Respondent] stopped that individual." Ortiz stated that he never wrote down the specifics of what he observed or of the description that he gave, as that would be the responsibility of the officers making the stop and doing the investigation. In the event of an arrest, more specific information is provided to the sergeant either after the tour or later on.

Upon being questioned by the Court, Ortiz explained that it is not necessary to give the specifics or details of what he observed because it is part of the training and understanding of the team members that he would only give a description in those circumstances when he had observed something that led him to believe that an individual had just been involved in some type of criminal activity. He also told the Court that it is common for investigators to come back later and discuss with him what he did observe that led him to believe that someone had committed a crime, and that at the end of his tour on November 10, 2005 he had had such a conversation with the Respondent.

Ortiz stated that once he gives the description he does not have any further involvement in terms of assisting with the investigation or the stop. He said that at the time of the incident he had been working with the Respondent on a daily basis, and that

he did later learn that as a result of the description he gave at about 5:35 p.m. on the date of the incident, two individuals were stopped and ultimately released after having been given UF250s.² He said that he received a radio broadcast telling him that it was negative, but could not remember if the broadcast had come from the Respondent or Catalano.

The Respondent's Case

The Respondent called Police Officer Maria Catalano as a witness and the Respondent testified in his own behalf.

Police Officer Maria Catalano

Catalano is currently assigned to the Counterterrorism Division, and was previously assigned to several different units within the 75 Precinct. In November 2005 she was assigned to SNEU with the Respondent as her supervisor. At the time of the incident she had already been in SNEU for about two weeks. On November 10, 2005 she was working the 4 to 12 shift with the Respondent.

Catalano testified that in SNEU it is the responsibility of the chase team to act on the information provided by the observation team, which is generally just a description of the individual they want stopped. She stated that she was involved in stopping Carter and Mosley because the observation post gave a description of them, and that she and the Respondent were in a car on Pennsylvania Avenue when they got the radio broadcast.

When asked to describe with detail the description they received, Catalano stated, "They were two male blacks walking northbound on Pennsylvania Avenue."

² Stop, Question and Frisk Report Worksheets

Catalano stated that she and the Respondent had seen two individuals matching that description, and so they attempted to stop and speak to them. She did not recall if she or the Respondent had actually said anything to them, but said that the individuals ran away from them into 669 Pennsylvania Avenue.

Catalano said that she and the Respondent followed them into the building and that she was behind the Respondent. Catalano stated that she had never been to the building before that day and that a few seconds after they got to the door a kid came down and opened it, allowing her and the Respondent to enter. The two men they had followed were standing in the hallway, and that she and the Respondent tried once again to talk to them.

Describing the initial interaction inside the building, Catalano stated that, "We tried to speak to them to let them know why we were there... We were trying to explain to them why we were there but verbatim I don't remember." Catalano stated that she and the Respondent were wearing plain clothes and had their badges around their necks on the outside of their clothing. She said that the two men were 'very upset' that she and the Respondent were there. "They were very loud, flailing the arms, boisterous, agitated."

Catalano stated that the hallway was very narrow and that both of the men were bigger than she was, so she handcuffed one of them for her safety. She said that she explained to him why she did it and that, "as I explained to him he was okay with it so I handcuffed him and had him sit down." Catalano said that she frisked the man she had handcuffed for safety but did not recover any weapons or contraband or anything else on his person, and that the Respondent frisked the other man but also did not recover

anything. Catalano explained that frisking means going over the outermost clothing for safety concerns. She did not recall if anything was removed from the individuals.

When asked if at any point the Respondent had left the hall area and gone somewhere else, Catalano responded in the affirmative, stating that he had gone, "Down through the door to the basement stairs." She stated that she had discussed with him why he went down there, and explained that, "When we came in they were going to go in that area so it looked like they maybe thrown something down the stairs so he had just went to check and see if he saw anything." Catalano testified that the Respondent was down the stairs for, "Less than 15 seconds," during which time she was in the hallway with the men, one handcuffed and one not.

Catalano stated that one of the men seemed more okay than the other, but that both were "still a little agitated." She asserted that at no time did she hear the Respondent curse, swear, use any racial expressions or epithets, be discourteous or use any type of profanity to either of the men. When asked if he had raised his voice, she responded that, "We were firm, we needed them to you know, stop acting in an unsafe manner."

When asked to elaborate on the way that the men were acting and the reason that she and the Respondent had felt the need to raised their voices, Catalano explained that the hallway was narrow, and that the men were both larger than she was. "So when they were moving their arms around in the air why are you here, they were agitated and I don't know how else I can verbally describe it...They were moving taking steps towards you and taking steps away from you and moving their bodies from side to side...They are talking very loudly at you."

Catalano said that when the Respondent came back upstairs and to the hallway area she uncuffed the man that she had handcuffed and asked him for ID. She said that she and the Respondent prepared UF250s. "They asked us for our names and shields which we gave them." Catalano did not remember if she saw them record the names and shield numbers anywhere. She stated that she asked for identification because the forms she needed to fill out require it, and that the two men provided it to her. She told the Court that she had explained to them that she and the Respondent were filling out those forms to confirm that they had in fact been stopped by members of the Department. Catalano did not remember if they had finished filling out those forms while still in the lobby of 669 Pennsylvania Avenue or back in the car, but stated that she did fill them out on that day and that she did take their pedigree information and record that while in the building.

Catalano was shown two documents, one of which she identified as a stop and frisk report work sheet that she had filled out about Carter, and the other about Mosley. (RX B and C). She said that the Respondent did not ask her to fill them out but that she did it automatically in this situation. She further stated that she submitted both of them to her command for filing with the Department to document the fact that these two men had been stopped, questioned and frisked on November 10, 2005.

Catalano said that from the time they entered until the time they exited the building she and the Respondent were inside for a total of between five and ten minutes.

On cross-examination Catalano testified that she first learned the identities of the two men that she and the Respondent had stopped while they were still in the building at 669 Pennsylvania Avenue. She stated that they gave her and the Respondent their

identifications and that she filled out the UF250s based on that information. She affirmed the fact that neither of the men were issued a summons, nor were they arrested, because, "there was no reason to arrest them...There was no probable cause to arrest them."

Catalano did not recall the description of the suspects that had come over the radio or what they were alleged to have done. She stated that she noticed two males on Pennsylvania Avenue that she believed were the suspects based upon the description that she had been given at that time, but could not recall the description at the time of the trial. She said that her intention when she observed them was to approach them and question them but not to arrest them until after questioning and a brief investigation because at that point they had no legal authority to arrest them. She and the Respondent got out of the car and approached the two men, with the Respondent in the lead. She further stated that the two men ran off and that she and the Respondent followed them. When asked if she was certain that it was two men on the street and not just Carter, Catalano again asserted that there were two men.

Catalano stated that she did not know either at the time of the incident or at the time of the trial that one of the men owned the building. She told the Court that when she entered the building one of the men was trying to enter a stairway that led downstairs, but she could not recall which man it was. She said that there was no marking on the doorway or stairway that indicated that it was a separate apartment in the building, and that the door was locked. She testified that the Respondent got the keys from one of the men and went behind the door for a short period of time, "less than fifteen seconds."

Catalano stated that the incident occurred in the late afternoon, but could not remember if it was dark outside. She acknowledged that it was rush hour and that

Pennsylvania Avenue is a heavily trafficked thoroughfare, but could not recall if the streets were full of cars or if there were a number of other pedestrians in the area besides the two men that ran into the building.

Catalano affirmed that the men were flailing their arms and being confrontational with her and the Respondent when they entered the building, and that she thought the men posed a danger to her. She did not have occasion to draw her weapon, and did not recall if she was equipped with any other defensive device such as pepper spray. She stated that the Respondent did not use any type of weapon either. Catalano did not recall who was present on the observation post that day, nor did she recall the name or identity of the officer or officers who had put out the description of the suspects and what they had allegedly done.

On re-direct examination Catalano acknowledged that on a SNEU team, when the observation officer makes a broadcast, the other officers rely on the fact that the observation officer saw something that he or she believes was criminal activity. They do not require that the observation officer tell them what he or she saw before they stop the person.

Catalano stated that her purpose in doing the frisk was for safety, to look for the possibility of a weapon. When questioned by the Court, Catalano reiterated that the Respondent went through the door that leads to the basement, and was beyond the door for less than fifteen seconds before he came back out.

The Respondent

The Respondent has been a member of the Department since 1997, and had been assigned to the 75 Precinct for approximately four years at the time of the trial. He is currently assigned to the Field Training Unit, but was previously the supervisor for the SNEU team. He described the responsibilities of the supervisor is to,

supervise all our function for the team post my personnel as I see fit, assign observation post to chase cars and prison van, oversee all the activity street wise and investigation wise inside the precinct and outside. Supervise the arrest and arrest procedures from the time of the radio transmission to the completion of the arrest itself, sign paperwork and assist the officers in anything that they might need as far as searching, supervising a search and transporting prisoners.

The Respondent had received special training in narcotics intervention, both at the Police Academy and then in a SNEU course, as well as a month of advanced narcotics training. The Respondent at the time of the incident had personally made somewhere between approximately 80 and 100 narcotics arrests, but had been involved in or supervised about 1,000 arrests.

When asked to describe the responsibilities of the observation post, the Respondent said that, "Their responsibility is to identify and transmit people they believe are engaged in narcotic transaction." He explained that they are not required to broadcast the specifics of what they observe when they make their observation, and that the chase cars are responsible for acting on the description provided by the observation post and stopping the individual or individuals in question. He said that the stop does not always result in the arrest of the individuals, and that if it does not result in an arrest, "It's just a negative observation post. Ideally we will get notified and continue with the SNEU set at that point. In the event that a stop is made with no resulting arrest, a UF250 would be prepared.

The Respondent stated that on November 10, 2005, he was working with Catalano, and that Biaz and Ortiz were assigned as the observation post. There was also another chase car and a prison van. The Respondent said that Biaz and Ortiz were both very experienced officers who had worked the observation post before under his supervision. He told the Court that at about 5:35 p.m. he received a radio broadcast that prompted him to action, and when asked to describe the content of the broadcast he said that, "It was a description of male blacks that were proceeding northbound on Pennsylvania Avenue from the vicinity of Hegeman."

The Respondent said that he had been to the location of Hegeman and Pennsylvania Avenue before, and described it as, "Problematic, drug prone." He said that it is both commercial and residential. The Respondent testified that he was a block or two away when he heard the transmission, and began heading northward towards the location. He stated that he was driving the car in the opposite direction down Pennsylvania Avenue, in the direction that he had been told the alleged perpetrator was heading. The Respondent said that he had observed the male fitting the description on the east side of Pennsylvania Avenue walking northbound. At the time he made this observation, the Respondent was not aware of what the observation post had observed that had led them to broadcast the description. Later that day he learned that the individual described had allegedly been engaged in a hand-to-hand transaction in the vicinity of Hegeman and Pennsylvania Avenue.

The Respondent said that when he first observed the individual who fit the description, he was on the sidewalk walking northbound, and that he never saw the individual in any type of automobile or exiting any automobile. The Respondent stated

that he exited his own automobile and walked across Pennsylvania Avenue toward him, then attempted to stop him. He noted that the individual was dressed casually, and that he was wearing plainclothes with his shield on a chain around his neck at chest level, clearly displayed on his outermost garment. The Respondent further noted that Catalano exited the vehicle at about the same time he did, and he assumes that she was behind him as he approached the individual in question.

The Respondent testified that he called out to the individual and identified himself as a member of the police, although he did not recall the exact words he used. "I will usually say police, hold up, please sir. Something to that effect." The Respondent estimated that he was ten to 15 feet from the individual when he made that statement, and that he spoke in a loud and clear voice "because Pennsylvania is heavily traveled it had for someone to hear you have to speak up loud. I don't think I was screaming but I wasn't whispering either."

When asked how the individual had responded to his statement, the Respondent answered, "Flight. He looked in my direction and then fled away from me which would be off Pennsylvania Avenue eastbound upstairs into a building." The Respondent said that the individual only had to run about ten feet to get to the building, and that he entered the building and disappeared from sight. The Respondent said that he was jogging behind him, and that, "I reiterated my statement that I made previously for him to stop a little more louder and little more forcefully which he disregarded." The Respondent did not see the individual do anything before he entered the building, but said that at his initial approach the individual did turn around and look at him and make eye contact with him.

When the Respondent got to the door, he attempted to open it, and found it to be locked. He said that he could see somebody who he believed to be the individual enter the vestibule into the hallway, and that after a short period of time a child came down, completely unrelated to the incident, and opened the door allowing himself and Catalano to enter. The Respondent said that he later learned the identity of the individual that he had been chasing, and that it was Carter.

The Respondent testified that,

As I entered I regained sight of him he was in the hallway. There is a door on the – I guess it could be if you want to say the south wall of the building and he was attempting to gain entry into that door. The door shut behind me I don't know maybe it was a noise from the door he looked, seen me again looked in my direction he began feverishly trying to get into the door. He was jiggling his keys, the door opened. I was calling out for him to stop I need a moment police, police, police, my shield clearly displayed around my neck. I got up over to his general vicinity he opened the door he went halfway into the doorway at which point I began to fear that he was concealing a weapon on that side of the body. I could not see at that particular point I grabbed hold of him pulled him from the doorway which he resisted.

When asked to describe the resistance, the Respondent replied that, "He pulled back the other way. I was trying to gain sight of his one side he pulled back so I couldn't see."

The Respondent did not remember if he had grabbed him with one hand or two, but thought it might have been two.

The Respondent testified that at the time he did not know that the door led to the basement, and that he did not draw a weapon at any point during the encounter, nor did he see Catalano draw a weapon. The Respondent stated that he was finally able to remove Carter from the doorway, and that as he removed him, Carter grabbed the knob and slammed it shut. The Respondent explained that he later found out that the door

must have locked automatically, but that at the time his main concern was Carter and any potential weapons he might have had on him. The Respondent said that, "Some time during this another gentleman appears larger gentleman, anywhere from 6'1" to 6'2" I can't remember he was around 210 pounds." The Respondent identified this second man as Mosley, and when asked where Mosley had come from he stated that, "I still to this day don't know I really don't." The Respondent said that he noticed Mosley's presence after he removed Carter from the door, and that he believes Mosley was on his right side, his gun side.

The Respondent stated that of the two men, Carter was more irate.

After it became apparent, well after it seems to me that it became apparent to him that he was no longer able to get away from the police he seemed to adopt another activity, which is screaming at the police and his beginning statements to me were inaudible that they were because maybe because the hallway was so small he was screaming and I couldn't make out what he was saying. He was pointing his fingers, he was moving around. He had refused to comply with every order I had given him up until and during this point it was at this time once again I became a little more fearful I don't know if he has a weapon on him, I don't have a frisk on him yet and I don't know if he has anything on him that I have to be worried about as far as weapon wise.

The Respondent said that he was able to gain physical control of Carter while Catalano dealt with the recently appeared Mosley. When asked if he had thrown or shoved Carter against the wall, the Respondent stated that, "I physically had to gain control of him I am sure he wound up against the wall yes, yes." He said that his purpose in doing so was to frisk him and make sure he did not have any weapons. The Respondent said that during his frisk of Carter he noticed a large bulge in his pockets which seemed abnormal, and so he frisked that area and felt hard objects. The Respondent said that he could not remember exactly what he removed from Carter's pockets, but that he did so to make sure there were no weapons, and that it was,

"definitely cell phones, keys, I think there was some[thing] long like he had a couple pens and tools, you know, some kind of tools if I remember."

The Respondent did not remember if he had handcuffed Carter or not, but said that Catalano did handcuff Mosley. He did not remember if he had told her to do so.

The Respondent testified that once he was confident that Carter had no weapons, he attempted to begin an investigation, which Carter resisted.

At that point I asked him why he was going downstairs, which he refused to give me an explanation for, he refused at that point to tell me anything about it so I didn't know exactly why he was trying to get into that door...I asked him if there was anything down there that would be harmful to anybody to which again he refused. He said – I ask him again and he said no, no, no and I asked him are those his keys, he told me yes they were, I said may I have them he said here take them. He handed me they keys and I said I am going to check this make sure there is nothing here that is going to hurt anybody. He said... he really didn't say anything. I can't remember his exact statements. He was still agitated that we are there. I opened the door I told Officer Catalano that I was going into the doorway for a brief period. She sat the larger of the gentlemen down Mr. Carter to the other side of door I believe and I proceeded down the stairs. I didn't even get halfway down.

The Respondent stated that he did not know what was behind the door when he entered the doorway, and that, upon entering, he learned that it was a stairway to another door. He said that it was dimly lit and he observed, "A lot of garbage but I didn't find any weapon or contraband at that point. It was well my biggest fear would be a weapon at that point I didn't see one plainly laying on the stairs there and it sounds silly it was apparently if there was some type of contraband, which a lot is about this big (noting that it was almost the size of a pebble) it would have been it would have took years to find."

The Respondent testified that he did not ever enter through the door at the bottom of the stairs, and that he still has no idea what is behind that door. He said that he was down the stairs for "seconds," then came back up the stairs and shut the door, gave Carter

his keys back, and instructed Catalano to uncuff Mosley, which she did. The Respondent said that he attempted to give an explanation, which was refused, and that all they wanted were names and shield numbers, which he and Catalano provided.

We asked for ID's after several times they finally complied and gave identification. I don't know if one of them might have been verbally identified I know someone actually did hand over ID it might have been both I am not exactly sure. At that point Officer Catalano jotted down their information for purposes of filling out a 250 report. They asked us for our shield numbers we provided to them verbally...I said I am Sergeant Downes I work at the 75 Precinct shield number 3978 I said 3978, 3978 a couple of times.

The Respondent stated that one of the men approached him, at which time he said, "sir, please stand back." He said that the man wrote his shield number down on a piece of paper (he thinks it was on the back of a piece of mail), and then he and Catalano left the location, conveyed their findings to the operation post, and continued with the SNEU set.

When asked by the Court why he did not enter through the second door at the bottom of the stairs and go into the basement, the Respondent stated that,

I have no business going through that door. I don't know if he lived down there. I have no legal right to enter that premise. I did see him conceal himself behind the one door anything that he might have had or might have dropped was in one hand that I feared for that was in his general vicinity or would have been right behind that door right there the couple steps down. Even if he had gotten the chance to throw it it still wouldn't have made it into that apartment or into that boiler room or whatever else was behind that door. At that point I had no reason to go in there so I didn't go in there.

Not to mention safety purposes in my concern the door comes under the same safety constringent [sic] like if you conduct a search warrant and I didn't have one those people were not with me therefore at that point I wouldn't have entered that door with just me and Officer Catalano and two other people stopped in the hallway anyway." When asked by the Court if he meant to say that he did not want to leave Catalano alone, the Respondent replied, "That is exactly what I am saying sir.

The Respondent told the Court that he only lost sight of Carter briefly when Carter entered the building, but that once he entered the building behind Carter he never lost sight of him again. The Respondent stated that when he entered the hallway Carter was, "in the middle of the hallway attempting to gain entry to that specific building that we are speaking about." The Respondent explained that when he entered the building Carter did not yet have the door open, but that when he got closer to him Carter got the door open and was halfway inside when he grabbed him. The Respondent asserted that, "He never got completely through the door to which I would lose sight of him no."

The Respondent stated that, "When I seen him originally by the door I am thinking he is attempting to escape or barricade himself inside that door and as I got closer he planted himself inside the door and wouldn't show one side to me. My fear I was certain he had a weapon at that point the way he was acting. I was actually surprised to find out that he didn't to be honest with you that is exactly what I was thinking."

When asked what had made him go down and look into that area, the Respondent explained that it was,

Him refusing to reveal that side of his body upon my initial approach. The door was open when I removed him from it he physically shut the door on his – while I pulled him out and while I was occupied with him his hands were free he grabbed the doorknob and shut the door. Now in my like, you are asking me what I was thinking, I was thinking he dumped something in there and that he is why he tried to conceal it.

Not to mention I am also thinking how I gained entry into a building I have approximately a ten year old kid who once again I don't know anything about the location obviously the kid lives there, visits there, whatever the case is he has access to the building if I don't at least make sure that I don't secure a weapon or anything else that might be danger to the child that is on the stairway there then I am not doing my job.

The Respondent noted that it was the left side of Carter's body that had been obstructed from his view.

The Respondent reiterated that he had stopped Carter but not Mosley, and that he had frisked Carter but believed that Catalano had frisked Mosley. He stated that he had searched Carter and that from, "His one pocket I removed a couple of items...Because I felt that he could have something in there that could be used as a weapon. I felt a long object that I thought might be a screw driver or knife and I wanted to know what it was before I left Officer Catalano with alone with them."

The Respondent testified that he did not enter and search the basement area of 669 Pennsylvania Avenue, and that he only opened the door to the stairway and looked down the stairs before returning to the first floor. He stated that he did this based on his observation of Carter behind that door shielding or hiding his left side. He noted that he did not remove anything from the stairwell, and that to his knowledge the UF250 forms were done.

The Respondent testified that from the time he entered 669 Pennsylvania Avenue until the time that he exited approximately five to ten minutes passed. He stated that he never cursed, swore or used profanity, nor did he use any racial epithet towards either Carter or Mosley, and that when he raised his voice while in the hallway, "That was to try to gain compliance and give direction, yes."

On cross-examination, the Respondent acknowledged that at the time the incident ended, neither Carter nor Mosley were issued a summons or arrested, which means that he had not developed the probable cause necessary to arrest. When asked what led him

to drop his suspicion that Carter was involved in narcotics activities, the Respondent stated that,

I wouldn't say I necessarily dropped my suspicion. At the point it became evident that I couldn't get to the level of probable cause...Because at the point where I came back from the stairs it became apparent to me that either A) he was negative because he was just negative and the drugs were maybe concealed in a place that we couldn't recover from on the street. [When asked by the Court to explain what he meant by "negative," the Respondent said, "Didn't have any narcotics on them. By positive I would mean that he did have drugs on him." He then continued,] B) it was apparent to me that if he did have those narcotics on him that they were in a place now where I wouldn't be able to find them, I wouldn't have the time to find them without compromising the rest of my team that was still active in the field.

The Respondent testified that he never asked Carter if he owned or was the superintendent or tenant of the building at 669 Pennsylvania Avenue. He said that they simply, "asked him if he lived there. Some time later he responded that he did. On the initial approach I wasn't able to ascertain that from him no."

The Respondent stated that on November 10, 2005 he did not have evidence that Carter had committed a crime, but that he would not characterize his pursuit of Carter into 669 Pennsylvania Avenue, his frisk and search of Carter, or his entry into the downstairs area of the building, as 'a mistake.' When asked if he had taken police action against a person who did not commit a crime, the Respondent stated that,

We can't prove he committed a crime, therefore I can't arrest him that doesn't mean I cease all police activity because he happen to be better than me on that day or conceal something in a spot that legally I am not able to retrieve it from at this particular time. I do not stop being a police officer simply because a criminal might have a better night than me or might be in a place where I have rules to abide by that he doesn't. I do not stop stopping people simply because of that fact sir. I would not characterize my conduct on that night nor my team's conduct on that night as a mistake.

The Respondent stated that he first approached Carter on the east side of Pennsylvania Avenue, and that he was stationed in his unmarked car on the west side of

the street facing a southbound direction, so that he had to look across the street to see Carter. When told that Catalano had testified to the fact that there were two men on the street, the Respondent stated that, "I wouldn't say she was incorrect," and reiterated that he did not see Mosley until he was inside the building.

The Respondent testified that the basis for approaching Carter was the fact that he fit the description of a drug suspect. When asked what the description was, he stated that, "The exact description I cannot recall for you at this point it was a male black and his direction was northbound on Pennsylvania Avenue. There was more to it there was clothing I can't recount it for you at this point it was some time ago."

The Respondent acknowledged that he was interviewed by the CCRB concerning this matter a few months after it happened, on February 17, 2006. He stated that at that time he was able to tell the CCRB the description more so than he was able to recall at the time of the trial. Having been given a chance to review the relevant portion of the transcript of that interview, the Respondent testified that he had told the CCRB that the description was, "make black, black jeans, maybe, I am not sure." The Respondent acknowledged that at that time he gave no further description. He stated that it was not the description that he had given the CCRB that had led him to approach Carter, but rather, "the description that was given that night coupled with conduct was the reason that I initially decided to approach him and why I continued to approach him."

When asked if the description that was given on November 10, 2005 included the suspect's age, height, or weight, the Respondent said that he did not recall, but that, "The observation post will attempt to give us as thorough a description as they possibly can."

When asked if he thought 'male black wearing jeans' is a thorough description, the Respondent explained that,

That doesn't have to be the description given that night that is just what I was able to remember three months later and that is not the only stop that my team has ever done so if the individual wasn't arrested then his description would only be documented over the radio or on a 250 so any description that I couldn't recollect then I apologize for that but that doesn't mean that they did not transmit it that night.

The Respondent stated that he never saw Carter exit a vehicle, and that his flight into the building further raised the Respondent's suspicions about his conduct. The Respondent stated that to his recollection 669 Pennsylvania Avenue was never the subject of a SNEU operation or of drug activity, and that he had never seen Carter before he stopped him. The Respondent acknowledged that SNEU gathers intelligence identities of people, who they believe to be dealing drugs, not just using them, and told the Court that Carter was not on that list.

FINDINGS AND ANALYSIS

The Respondent is charged in Specification Nos. 1 through 3 with wrongfully abusing his authority as a member of the Department by forcibly stopping, frisking and searching Carter and Mosley without sufficient legal authority to do so. The Respondent is further charged in Specification No. 4 with wrongfully abusing his authority as a member of the Department by entering and searching the basement area of 669 Pennsylvania Avenue without sufficient legal authority to do so.

On November 10, 2005, the Respondent was in charge of a Department-planned Street Narcotics Enforcement Unit (SNEU) operation in the vicinity of 669 Pennsylvania Avenue in Kings County New York. The Respondent and Catalano stopped, frisked and

searched Carter and Mosley and using Carter's keys entered a locked basement door in search of contraband and a weapon. No evidence was recovered and no arrests were made. This case therefore does not mirror that of a suppression hearing where defendants are challenging the legality of an arrest and subsequent recovery of contraband. Here the issue relating to the charged misconduct is whether the Respondent had the legal right or authority at that time to stop, frisk and search Carter and Mosley and then enter the locked basement.

During a SNEU operation an observation officer is positioned at a drug-prone location. Upon observing what he believes to be a drug deal, that officer transmits the descriptions of the perpetrators and their direction of travel on the radio. Other SNEU members referred to as the "chase" team use the information from observation officer's radio transmissions to locate and stop individuals suspected of involvement in a drug transaction.

On November 10, 2005, the Respondent and Catalano were positioned as the chase team awaiting radio transmissions from the observation team, Ortiz and Biaz, who were in position to observe a bodega at Hegeman and Pennsylvania Avenues, a drug-prone location. Ortiz, who participated in the role of an observation officer many times prior to November 10, 2005, recalled transmitting a couple of descriptions that day. In particular he recalled making a radio transmission at 5:35 p.m. of a male he believed purchased illegal drugs. He did not "recall the description of the clothing but ... probably did give out a description of the person purchasing narcotics." Because it was more than several years since that operation, Ortiz did not have a specific recollection of the person's description or of making the radio transmission that contained the person's

description. While he generally does not communicate the specifics of what he observed, he normally gives the description of the individual and the direction of travel. He explained that it is not necessary to give the specifics of what he observed because it is the understanding of the team members from their training and experience that he would only give descriptions of individuals involved in what he believed was criminal activity. He noted that the only individuals that would be hearing any transmissions over the point-to-point radios are the other members of the SNEU team. He also noted that no record of observations is made—in memo book or other notes because that would be the job or responsibility of another member of the team. He added that after an arrest is made more specific information is provided to the sergeant. He further noted that it is common for the arresting officer to come back later and discuss what he did observe that led him to believe that someone had committed a crime.

Ortiz stated that at the time of this SNEU operation he had worked with the Respondent on a daily basis and that he later learned that as a result of the 5:35 p.m. description that he transmitted, two individuals were stopped and ultimately released and UF250s were issued. He also stated that prior to November 10, 2005, SNEU operations involving that same bodega produced several successful narcotic operations.

Catalano was in the car with the Respondent when they received the description from the observation post. She recalled the description as “two male blacks walking northbound on Pennsylvania Avenue. She stated that she saw two individuals fitting the description and attempted to stop them and speak to them. She did not recall if she or the Respondent said anything to them but recalled the individuals ran from them and went into 669 Pennsylvania Avenue.

The Respondent testified that both Ortiz and Biaz were very experienced officers who had worked the SNEU observation post under his supervision prior to November 10, 2005. The description that he remembered Ortiz transmitting during his testimony was "male blacks that were proceeding northbound on Pennsylvania from the vicinity of Hegeman." While the Respondent initially referred to more than one male, he subsequently referred to only one description of a male that he observed walking northbound on the sidewalk. That individual was Carter. He testified that he subsequently saw Mosley in the hall of the building but he did not know where he came from.

The Respondent did not see Carter exit an automobile. When he saw him on the street he testified that he called out to him saying something in line with "police, hold up sir." He was approximately fifteen feet from Carter when he called to him and he spoke in a loud clear voice. According to the Respondent, once he asked him to stop, Carter "looked in [his] direction and then fled away from me which would be off Pennsylvania Avenue eastbound upstairs into a building." At that point the Respondent and Catalano followed Carter into 669 Pennsylvania Avenue and stopped both he and Mosley. The Respondent frisked and searched the two men.

At this point in the Respondent's SNEU operation this Court has little doubt that Ortiz observed a male black engaged in what he believed was an illegal drug transaction. Moreover, had Ortiz been in a position to apprehend that male he would have had probable cause to stop, frisk and search that male based on his observation of the drug transaction. But he was in an observation post and as he had done on many other occasions while working on this type of operation with the Respondent he then radioed a

description of the male to the chase team and the direction the male was traveling. The Respondent received the transmission and observed a male fitting that description walking on the street. At that point, the Respondent, who is now the arresting officer, had the probable cause to stop, frisk and search the male and if evidence is recovered arrest the male based on the radio transmission of his fellow officer, Ortiz. This transition of probable cause from one police officer to another officer is commonly referred to as the "fellow officer rule."

Under the fellow officer rule, "The arresting officer acts with probable cause when he arrests on the direction of a fellow officer who has probable cause or without such direction on the basis of information received from a fellow officer who testifies at the suppression hearing concerning how he obtained his knowledge which information itself or together with that known to the arresting officer establishes probable cause." (People v. Gittens, 627 N.Y.S.2d 435 (1995) *citing*, People v. Brnja, 50 NY2d 366, 373.) "This rule is based on both the presumption of veracity and accuracy afforded the communication from one police officer to another and the recognition that modern law enforcement often involves the work of a variety of officers. In general, this rule is applied when there is an express communication of information or direction to take action from one police officer to another." (Id at 245) Here, Ortiz gave a direction to the Respondent that a drug buy had taken place and to apprehend and make the arrest of the male that Ortiz had the requisite probable cause to make. "Once the defendant challenges the police action, however, 'the presumption of probable cause disappears and the knowledge of the sender may no longer be imputed to the officer.'" People v. Jones, 124 A.D. 1024 (1986)

This Court finds that Ortiz in making a radio transmission to the chase team that was general in nature does not deter from the Respondent convincing this Court that he had requisite probable cause to arrest or the authority to at least detain that individual for further investigation. In People v. Washington, Johnson, 2006 N.Y. Misc. Lexis 2369, 236 N.Y. L.J. 44 (N.Y. Sup. Ct. 2006), the court determined that "A radio transmission which is general in nature and does not specify the specific actions of a defendant has been found sufficient to establish probable cause by the New York Court of Appeals. In People v. Washington, the Court of Appeals held "the statement that a 'positive observation' has been made adequately communicated the nature of the conduct observed, where the arresting officer testified that the phrase was commonly used among police officers to indicate an exchange of drugs for money and that she understood it to mean that the observing officer had personally witnessed such an exchange at the time." (87 N.Y. 2d 945 (1996). The court further determined that "The term 'drug transaction' when used by a police officer who has observed a sale of narcotics, coupled with the description and location of the persons involved, provides a sufficient probable cause predicate for an arrest. Id., Citing People v. Genyard, 276 A.D 2d 299 (2000). The court also noted that "An officer is permitted to assume that a radio transmission from a fellow officer is reliable and to then take appropriate action based upon that transmission." Id., Citing People v. Lypka, 36 N.Y. 2d 210 (1975)

In addition, Ortiz testified that it is understood by the team that his radio transmission means that a level of criminality has taken place. The fact that Ortiz, the Respondent and Catalano could not remember the details of the description is also not fatal to their stopping Carter. No arrests were made in this case. Had Carter and Mosley

been arrested then as Ortiz testified he would have discussed what he observed with the Respondent which would have presumably included the drug transaction and the confirmation of the description of the buyer. A written record would also have been made of the event including a detailed description of the perpetrator.

This Court finds that the Respondent did receive a radio transmission from Ortiz regarding a male black who purchased drugs and the direction that he was traveling. It is uncontroverted that the Respondent did see Carter in the vicinity of the location given over the radio and did see him enter 669 Pennsylvania Avenue. The Respondent entered the location and with the transfer of probable cause from his fellow officer, Ortiz, he frisked and searched Carter, and also Mosley. This Court can make this presumption because absent any specific proof to the contrary there is a "presumption of regularity" whereby the law presumes "that no official or person acting under an oath of office will do anything contrary to his official duty, or omit anything which his official duty requires to be done." Saunders v. State, 14 Misc. 2d 881, 181 N.Y.S.2d 138 (Ct. Cl. 1958)

As will be seen later in this decision, this Court credits Carter's version of why he was at the location and how it came about that he was stopped and searched in the hallway of his building. With respect to the stop and search of Carter it matters not whose version this Court finds credible because the Respondent had the authority to stop and search Carter once he received the transmission from his fellow officer, Ortiz.

Based on the foregoing this Court finds the Respondent Not Guilty of Specification Nos. 1 through 3.

While this Court credits the Respondent with having the authority to conduct his investigation of Carter and Mosley pursuant to Ortiz's radio transmission, it does not credit his version of his approach to Carter on the street and his subsequent entry into the locked basement.

Carter, the owner of 669 Pennsylvania Avenue, credibly testified that he and Mosley were returning from an unsuccessful attempt to purchase replacement tiles for one of the bathrooms in the building. After returning to the building's location he was walking and possibly running across the heavily traveled thoroughfare of Pennsylvania Avenue to help Mosley get into the basement so he could change from his work clothes. This Court is not convinced, as the Respondent testified that he was fleeing from the Respondent's direction to stop. Nor was the Respondent persuasive where he testified that he saw a bulge in Carter's clothing indicating that he had a weapon and that it appeared he threw the weapon into the basement. Further it is worth noting no gun or drugs were recovered.

As previously stated, what Carter was doing prior to the stop is irrelevant because it does not affect the Respondent's authority to stop him upon receiving the radio transmission.

What is relevant is that this Court further credits Carter's testimony where he testified that subsequent to the stop and search the Respondent threatened to kick the door down if he did not point out the key that unlocked the basement door. Carter reluctantly showed him the key and the Respondent entered the locked basement without Carter's permission. This Court therefore finds that the Respondent entered the locked basement without the requisite search warrant and as such did not have the authority to do so.

Based on the foregoing the Respondent is found Guilty of Specification No. 4

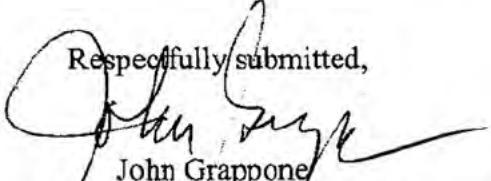
PENALTY

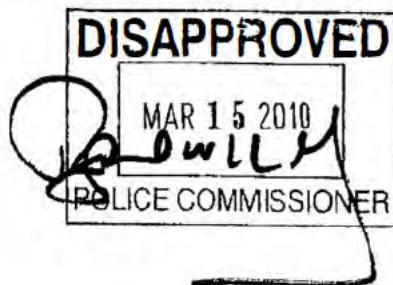
In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on April 15, 1997. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of entering and searching the basement area of 669 Pennsylvania Avenue without sufficient legal authority to do so.

Accordingly, it is recommended that the Respondent forfeit a penalty of 10 vacation days.

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

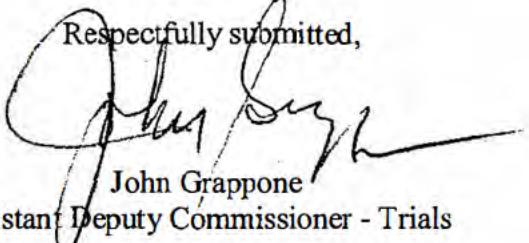
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT SEAN DOWNES
TAX REGISTRY NO. 918975
DISCIPLINARY CASE NO. 82894/07

The Respondent was appointed to the Department on April 15, 1997. The Respondent on his last three performance evaluations in 2004, 2007 and 2008 was rated 4.0, 4.5 and 4.5 respectively. The Respondent was awarded twelve Excellent Police Duty Medals and ten Civilian Commendation [REDACTED]

The Respondent's has no prior disciplinary record.

For your consideration.

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner - Trials